

**Enrolled**  
**House Bill 3099**

Sponsored by Representative CLEM (at the request of Oregon Farm Bureau)

CHAPTER .....

AN ACT

Relating to use of land zoned for exclusive farm use; creating new provisions; and amending ORS 197.065, 215.203, 215.213, 215.246, 215.249, 215.251, 215.263, 215.275, 215.283, 215.417, 215.452, 215.780 and 308A.056.

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1.** ORS 215.213 is amended to read:

215.213. (1) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition), the following uses may be established in any area zoned for exclusive farm use:

[(a)] *Public or private schools, including all buildings essential to the operation of a school.*

[(b)] (a) Churches and cemeteries in conjunction with churches.

[(c)] (b) The propagation or harvesting of a forest product.

[(d)] (c) Utility facilities necessary for public service, including wetland waste treatment systems but not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height. A utility facility necessary for public service may be established as provided in ORS 215.275.

[(e)] (d) A dwelling on real property used for farm use if the dwelling is occupied by a relative of the farm operator or the farm operator's spouse, which means a child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm operator does or will require the assistance of the relative in the management of the farm use and the dwelling is located on the same lot or parcel as the dwelling of the farm operator. Notwithstanding ORS 92.010 to 92.190 or the minimum lot or parcel size requirements under ORS 215.780, if the owner of a dwelling described in this paragraph obtains construction financing or other financing secured by the dwelling and the secured party forecloses on the dwelling, the secured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new parcel.

[(f)] (e) Nonresidential buildings customarily provided in conjunction with farm use.

[(g)] (f) Primary or accessory dwellings customarily provided in conjunction with farm use. For a primary dwelling, the dwelling must be on a lot or parcel that is managed as part of a farm operation and is not smaller than the minimum lot size in a farm zone with a minimum lot size acknowledged under ORS 197.251.

[(h)] (g) Operations for the exploration for and production of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the wellhead. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732 (2)(a) or (b).

[(i)] **(h)** Operations for the exploration for minerals as defined by ORS 517.750. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732 (2)(a) or (b).

[(j)] *A site for the disposal of solid waste that has been ordered to be established by the Environmental Quality Commission under ORS 459.049, together with equipment, facilities or buildings necessary for its operation.*

[(k)] **(i)** One manufactured dwelling or recreational vehicle, or the temporary residential use of an existing building, in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative of the resident. Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished or returned to an allowed nonresidential use. The governing body or its designee shall provide for periodic review of the hardship claimed under this paragraph. A temporary residence approved under this paragraph is not eligible for replacement under paragraph [(t)] **(q)** of this subsection.

[(L)] *The breeding, kenneling and training of greyhounds for racing in any county with a population of more than 200,000 in which there is located a greyhound racing track or in a county with a population of more than 200,000 that is contiguous to such a county.*

[(m)] **(j)** Climbing and passing lanes within the right of way existing as of July 1, 1987.

[(n)] **(k)** Reconstruction or modification of public roads and highways, including the placement of utility facilities overhead and in the subsurface of public roads and highways along the public right of way, but not including the addition of travel lanes, where no removal or displacement of buildings would occur, or no new land parcels result.

[(o)] **(L)** Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as no longer needed.

[(p)] **(m)** Minor betterment of existing public road and highway related facilities, such as maintenance yards, weigh stations and rest areas, within right of way existing as of July 1, 1987, and contiguous public-owned property utilized to support the operation and maintenance of public roads and highways.

[(q)] **(n)** A replacement dwelling to be used in conjunction with farm use if the existing dwelling has been listed in a county inventory as historic property as defined in ORS 358.480.

[(r)] **(o)** Creation [of], restoration [of] or enhancement of wetlands.

[(s)] **(p)** A winery, as described in ORS 215.452.

[(t)] **(q)** Alteration, restoration or replacement of a lawfully established dwelling that:

(A) Has intact exterior walls and roof structure;

(B) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;

(C) Has interior wiring for interior lights;

(D) Has a heating system; and

(E) In the case of replacement:

(i) Is removed, demolished or converted to an allowable nonresidential use within three months of the completion of the replacement dwelling. A replacement dwelling may be sited on any part of the same lot or parcel. A dwelling established under this paragraph shall comply with all applicable siting standards. However, the standards shall not be applied in a manner that prohibits the siting of the dwelling. If the dwelling to be replaced is located on a portion of the lot or parcel not zoned for exclusive farm use, the applicant, as a condition of approval, shall execute and record in the deed records for the county where the property is located a deed restriction prohibiting the siting of a dwelling on that portion of the lot or parcel. The restriction imposed shall be irrevocable unless a statement of release is placed in the deed records for the county. The release shall be signed by the county or its designee and state that the provisions of this paragraph regarding replacement dwellings have changed to allow the siting of another dwelling. The county planning director or the director's designee shall maintain a record of the lots and parcels that do not qualify for the siting

of a new dwelling under the provisions of this paragraph, including a copy of the deed restrictions and release statements filed under this paragraph; and

(ii) For which the applicant has requested a deferred replacement permit, is removed or demolished within three months after the deferred replacement permit is issued. A deferred replacement permit allows construction of the replacement dwelling at any time. If, however, the established dwelling is not removed or demolished within three months after the deferred replacement permit is issued, the permit becomes void. The replacement dwelling must comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to siting at the time of construction. A deferred replacement permit may not be transferred, by sale or otherwise, except by the applicant to the spouse or a child of the applicant.

[(w)] (r) Farm stands if:

(A) The structures are designed and used for the sale of farm crops or livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, including the sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand if the annual sale of incidental items and fees from promotional activity do not make up more than 25 percent of the total annual sales of the farm stand; and

(B) The farm stand does not include structures designed for occupancy as a residence or for activity other than the sale of farm crops or livestock and does not include structures for banquets, public gatherings or public entertainment.

[(v)] (s) An armed forces reserve center, if the center is within one-half mile of a community college. For purposes of this paragraph, "armed forces reserve center" includes an armory or National Guard support facility.

[(w)] (t) A site for the takeoff and landing of model aircraft, including such buildings or facilities as may reasonably be necessary. Buildings or facilities shall not be more than 500 square feet in floor area or placed on a permanent foundation unless the building or facility preexisted the use approved under this paragraph. The site shall not include an aggregate surface or hard surface area unless the surface preexisted the use approved under this paragraph. **An owner of property used for the purpose authorized in this paragraph may charge a person operating the use on the property rent for the property. An operator may charge users of the property a fee that does not exceed the operator's cost to maintain the property, buildings and facilities.** As used in this paragraph, "model aircraft" means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is used or intended to be used for flight and is controlled by radio, lines or design by a person on the ground.

[(x)] (u) A facility for the processing of farm crops, or the production of biofuel as defined in ORS 315.141, that is located on a farm operation that provides at least one-quarter of the farm crops processed at the facility. The building established for the processing facility shall not exceed 10,000 square feet of floor area exclusive of the floor area designated for preparation, storage or other farm use or devote more than 10,000 square feet to the processing activities within another building supporting farm uses. A processing facility shall comply with all applicable siting standards but the standards shall not be applied in a manner that prohibits the siting of the processing facility.

[(y)] (v) Fire service facilities providing rural fire protection services.

[(z)] (w) Irrigation canals, delivery lines and those structures and accessory operational facilities associated with a district as defined in ORS 540.505.

[(aa)] (x) Utility facility service lines. Utility facility service lines are utility lines and accessory facilities or structures that end at the point where the utility service is received by the customer and that are located on one or more of the following:

(A) A public right of way;

(B) Land immediately adjacent to a public right of way, provided the written consent of all adjacent property owners has been obtained; or

(C) The property to be served by the utility.

[(bb)] (y) Subject to the issuance of a license, permit or other approval by the Department of Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with rules adopted under ORS 468B.095, and as provided in ORS 215.246 to 215.251, the land application of reclaimed water, agricultural or industrial process water or biosolids for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in an exclusive farm use zone under this chapter.

(2) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition), the following uses may be established in any area zoned for exclusive farm use subject to ORS 215.296:

(a) A primary dwelling in conjunction with farm use or the propagation or harvesting of a forest product on a lot or parcel that is managed as part of a farm operation or woodlot if the farm operation or woodlot:

(A) Consists of 20 or more acres; and

(B) Is not smaller than the average farm or woodlot in the county producing at least \$2,500 in annual gross income from the crops, livestock or forest products to be raised on the farm operation or woodlot.

(b) A primary dwelling in conjunction with farm use or the propagation or harvesting of a forest product on a lot or parcel that is managed as part of a farm operation or woodlot smaller than required under paragraph (a) of this subsection, if the lot or parcel:

(A) Has produced at least \$20,000 in annual gross farm income in two consecutive calendar years out of the three calendar years before the year in which the application for the dwelling was made or is planted in perennials capable of producing upon harvest an average of at least \$20,000 in annual gross farm income; or

(B) Is a woodlot capable of producing an average over the growth cycle of \$20,000 in gross annual income.

(c) Commercial activities that are in conjunction with farm use, including the processing of farm crops into biofuel not permitted under ORS 215.203 (2)(b)(L) or subsection [(1)(x)] (1)(u) of this section.

(d) Operations conducted for:

(A) Mining and processing of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005, not otherwise permitted under subsection [(1)(h)] (1)(g) of this section;

(B) Mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298;

(C) Processing, as defined by ORS 517.750, of aggregate into asphalt or portland cement; and

(D) Processing of other mineral resources and other subsurface resources.

(e) Community centers owned by a governmental agency or a nonprofit community organization and operated primarily by and for residents of the local rural community, hunting and fishing preserves, public and private parks, playgrounds and campgrounds. Subject to the approval of the county governing body or its designee, a private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. Upon request of a county governing body, the Land Conservation and Development Commission may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if the commission determines that the increase will comply with the standards described in ORS 215.296 (1). A public park or campground may be established as provided under ORS 195.120. As used in this paragraph, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hookup or internal cooking appliance.

(f) Golf courses **on land determined not to be high-value farmland as defined in ORS 195.300.**

(g) Commercial utility facilities for the purpose of generating power for public use by sale.

(h) Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities. A personal-use airport as used in this section means an airstrip restricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal-use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Oregon Department of Aviation in specific instances. A personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable rules of the Oregon Department of Aviation.

(i) A facility for the primary processing of forest products, provided that such facility is found to not seriously interfere with accepted farming practices and is compatible with farm uses described in ORS 215.203 (2). Such a facility may be approved for a one-year period which is renewable. These facilities are intended to be only portable or temporary in nature. The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market. Forest products, as used in this section, means timber grown upon a parcel of land or contiguous land where the primary processing facility is located.

(j) A site for the disposal of solid waste approved by the governing body of a city or county or both and for which a permit has been granted under ORS 459.245 by the Department of Environmental Quality together with equipment, facilities or buildings necessary for its operation.

(k) Dog kennels [*not described in subsection (1)(L) of this section*].

(L) Residential homes as defined in ORS 197.660, in existing dwellings.

(m) The propagation, cultivation, maintenance and harvesting of aquatic species that are not under the jurisdiction of the State Fish and Wildlife Commission or insect species. Insect species shall not include any species under quarantine by the State Department of Agriculture or the United States Department of Agriculture. The county shall provide notice of all applications under this paragraph to the State Department of Agriculture. Notice shall be provided in accordance with the county's land use regulations but shall be mailed at least 20 calendar days prior to any administrative decision or initial public hearing on the application.

(n) Home occupations as provided in ORS 215.448.

(o) Transmission towers over 200 feet in height.

(p) Construction of additional passing and travel lanes requiring the acquisition of right of way but not resulting in the creation of new land parcels.

(q) Reconstruction or modification of public roads and highways involving the removal or displacement of buildings but not resulting in the creation of new land parcels.

(r) Improvement of public road and highway related facilities such as maintenance yards, weigh stations and rest areas, where additional property or right of way is required but not resulting in the creation of new land parcels.

(s) A destination resort that is approved consistent with the requirements of any statewide planning goal relating to the siting of a destination resort.

(t) Room and board arrangements for a maximum of five unrelated persons in existing residences.

(u) A living history museum related to resource based activities owned and operated by a governmental agency or a local historical society, together with limited commercial activities and facilities that are directly related to the use and enjoyment of the museum and located within authentic buildings of the depicted historic period or the museum administration building, if areas other than an exclusive farm use zone cannot accommodate the museum and related activities or if the museum administration buildings and parking lot are located within one quarter mile of the metropolitan urban growth boundary. As used in this paragraph:

(A) "Living history museum" means a facility designed to depict and interpret everyday life and culture of some specific historic period using authentic buildings, tools, equipment and people to simulate past activities and events; and

(B) "Local historical society" means the local historical society, recognized as such by the county governing body and organized under ORS chapter 65.

(v) Operations for the extraction and bottling of water.

(w) An aerial fireworks display business that has been in continuous operation at its current location within an exclusive farm use zone since December 31, 1986, and possesses a wholesaler's permit to sell or provide fireworks.

(x) A landscape contracting business, as defined in ORS 671.520, or a business providing landscape architecture services, as described in ORS 671.318, if the business is pursued in conjunction with the growing and marketing of nursery stock on the land that constitutes farm use.

**(y) Public or private schools for kindergarten through grade 12, including all buildings essential to the operation of a school, primarily for residents of the rural area in which the school is located.**

(3) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition), a single-family residential dwelling not provided in conjunction with farm use may be established on a lot or parcel with soils predominantly in capability classes IV through VIII as determined by the Agricultural Capability Classification System in use by the United States Department of Agriculture Soil Conservation Service on October 15, 1983. A proposed dwelling is subject to approval of the governing body or its designee in any area zoned for exclusive farm use upon written findings showing all of the following:

(a) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use.

(b) The dwelling is situated upon generally unsuitable land for the production of farm crops and livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, location and size of the tract. A lot or parcel shall not be considered unsuitable solely because of its size or location if it can reasonably be put to farm use in conjunction with other land.

(c) Complies with such other conditions as the governing body or its designee considers necessary.

(4) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition), one single-family dwelling, not provided in conjunction with farm use, may be established in any area zoned for exclusive farm use on a lot or parcel described in subsection (7) of this section that is not larger than three acres upon written findings showing:

(a) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use;

(b) If the lot or parcel is located within the Willamette River Greenway, a floodplain or a geological hazard area, the dwelling complies with conditions imposed by local ordinances relating specifically to the Willamette River Greenway, floodplains or geological hazard areas, whichever is applicable; and

(c) The dwelling complies with other conditions considered necessary by the governing body or its designee.

(5) Upon receipt of an application for a permit under subsection (4) of this section, the governing body shall notify:

(a) Owners of land that is within 250 feet of the lot or parcel on which the dwelling will be established; and

(b) Persons who have requested notice of such applications and who have paid a reasonable fee imposed by the county to cover the cost of such notice.

(6) The notice required in subsection (5) of this section shall specify that persons have 15 days following the date of postmark of the notice to file a written objection on the grounds only that the dwelling or activities associated with it would force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use. If no objection is received, the governing body or its designee shall approve or disapprove the application. If an objection is received, the governing body shall set the matter for hearing in the manner prescribed in ORS 215.402 to 215.438. The governing body may charge the reasonable costs of the notice required

by subsection (5)(a) of this section to the applicant for the permit requested under subsection (4) of this section.

(7) Subsection (4) of this section applies to a lot or parcel lawfully created between January 1, 1948, and July 1, 1983. For the purposes of this section:

(a) Only one lot or parcel exists if:

(A) A lot or parcel described in this section is contiguous to one or more lots or parcels described in this section; and

(B) On July 1, 1983, greater than possessory interests are held in those contiguous lots, parcels or lots and parcels by the same person, spouses or a single partnership or business entity, separately or in tenancy in common.

(b) "Contiguous" means lots, parcels or lots and parcels that have a common boundary, including but not limited to, lots, parcels or lots and parcels separated only by a public road.

(8) A person who sells or otherwise transfers real property in an exclusive farm use zone may retain a life estate in a dwelling on that property and in a tract of land under and around the dwelling.

(9) No final approval of a nonfarm use under this section shall be given unless any additional taxes imposed upon the change in use have been paid.

(10) Roads, highways and other transportation facilities and improvements not allowed under subsections (1) and (2) of this section may be established, subject to the approval of the governing body or its designee, in areas zoned for exclusive farm use subject to:

(a) Adoption of an exception to the goal related to agricultural lands and to any other applicable goal with which the facility or improvement does not comply; or

(b) ORS 215.296 for those uses identified by rule of the Land Conservation and Development Commission as provided in section 3, chapter 529, Oregon Laws 1993.

**SECTION 2.** ORS 215.283 is amended to read:

215.283. (1) The following uses may be established in any area zoned for exclusive farm use:

*[(a) Public or private schools, including all buildings essential to the operation of a school.]*

*[(b)] (a) Churches and cemeteries in conjunction with churches.*

*[(c)] (b) The propagation or harvesting of a forest product.*

*[(d)] (c) Utility facilities necessary for public service, including wetland waste treatment systems but not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height. A utility facility necessary for public service may be established as provided in ORS 215.275.*

*[(e)] (d) A dwelling on real property used for farm use if the dwelling is occupied by a relative of the farm operator or the farm operator's spouse, which means a child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm operator does or will require the assistance of the relative in the management of the farm use and the dwelling is located on the same lot or parcel as the dwelling of the farm operator. Notwithstanding ORS 92.010 to 92.190 or the minimum lot or parcel size requirements under ORS 215.780, if the owner of a dwelling described in this paragraph obtains construction financing or other financing secured by the dwelling and the secured party forecloses on the dwelling, the secured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new parcel.*

*[(f)] (e) Primary or accessory dwellings and other buildings customarily provided in conjunction with farm use.*

*[(g)] (f) Operations for the exploration for and production of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the wellhead. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732 (2)(a) or (b).*

[(h)] (g) Operations for the exploration for minerals as defined by ORS 517.750. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732 (2)(a) or (b).

[(i)] *A site for the disposal of solid waste that has been ordered to be established by the Environmental Quality Commission under ORS 459.049, together with equipment, facilities or buildings necessary for its operation.*

[(j)] *The breeding, kenneling and training of greyhounds for racing.*

[(k)] (h) Climbing and passing lanes within the right of way existing as of July 1, 1987.

[(L)] (i) Reconstruction or modification of public roads and highways, including the placement of utility facilities overhead and in the subsurface of public roads and highways along the public right of way, but not including the addition of travel lanes, where no removal or displacement of buildings would occur, or no new land parcels result.

[(m)] (j) Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as no longer needed.

[(n)] (k) Minor betterment of existing public road and highway related facilities such as maintenance yards, weigh stations and rest areas, within right of way existing as of July 1, 1987, and contiguous public-owned property utilized to support the operation and maintenance of public roads and highways.

[(o)] (L) A replacement dwelling to be used in conjunction with farm use if the existing dwelling has been listed in a county inventory as historic property as defined in ORS 358.480.

[(p)] (m) Creation [of], restoration [of] or enhancement of wetlands.

[(q)] (n) A winery, as described in ORS 215.452.

[(r)] (o) Farm stands if:

(A) The structures are designed and used for the sale of farm crops or livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, including the sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand if the annual sale of incidental items and fees from promotional activity do not make up more than 25 percent of the total annual sales of the farm stand; and

(B) The farm stand does not include structures designed for occupancy as a residence or for activity other than the sale of farm crops or livestock and does not include structures for banquets, public gatherings or public entertainment.

[(s)] (p) Alteration, restoration or replacement of a lawfully established dwelling that:

(A) Has intact exterior walls and roof structure;

(B) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;

(C) Has interior wiring for interior lights;

(D) Has a heating system; and

(E) In the case of replacement:

(i) Is removed, demolished or converted to an allowable nonresidential use within three months of the completion of the replacement dwelling. A replacement dwelling may be sited on any part of the same lot or parcel. A dwelling established under this paragraph shall comply with all applicable siting standards. However, the standards shall not be applied in a manner that prohibits the siting of the dwelling. If the dwelling to be replaced is located on a portion of the lot or parcel not zoned for exclusive farm use, the applicant, as a condition of approval, shall execute and record in the deed records for the county where the property is located a deed restriction prohibiting the siting of a dwelling on that portion of the lot or parcel. The restriction imposed shall be irrevocable unless a statement of release is placed in the deed records for the county. The release shall be signed by the county or its designee and state that the provisions of this paragraph regarding replacement dwellings have changed to allow the siting of another dwelling. The county planning director or the director's designee shall maintain a record of the lots and parcels that do not qualify for the siting



of a new dwelling under the provisions of this paragraph, including a copy of the deed restrictions and release statements filed under this paragraph; and

(ii) For which the applicant has requested a deferred replacement permit, is removed or demolished within three months after the deferred replacement permit is issued. A deferred replacement permit allows construction of the replacement dwelling at any time. If, however, the established dwelling is not removed or demolished within three months after the deferred replacement permit is issued, the permit becomes void. The replacement dwelling must comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to siting at the time of construction. A deferred replacement permit may not be transferred, by sale or otherwise, except by the applicant to the spouse or a child of the applicant.

[(t)] (q) A site for the takeoff and landing of model aircraft, including such buildings or facilities as may reasonably be necessary. Buildings or facilities shall not be more than 500 square feet in floor area or placed on a permanent foundation unless the building or facility preexisted the use approved under this paragraph. The site shall not include an aggregate surface or hard surface area unless the surface preexisted the use approved under this paragraph. **An owner of property used for the purpose authorized in this paragraph may charge a person operating the use on the property rent for the property. An operator may charge users of the property a fee that does not exceed the operator's cost to maintain the property, buildings and facilities.** As used in this paragraph, "model aircraft" means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is used or intended to be used for flight and is controlled by radio, lines or design by a person on the ground.

[(u)] (r) A facility for the processing of farm crops, or the production of biofuel as defined in ORS 315.141, that is located on a farm operation that provides at least one-quarter of the farm crops processed at the facility. The building established for the processing facility shall not exceed 10,000 square feet of floor area exclusive of the floor area designated for preparation, storage or other farm use or devote more than 10,000 square feet to the processing activities within another building supporting farm uses. A processing facility shall comply with all applicable siting standards but the standards shall not be applied in a manner that prohibits the siting of the processing facility.

[(v)] (s) Fire service facilities providing rural fire protection services.

[(w)] (t) Irrigation canals, delivery lines and those structures and accessory operational facilities associated with a district as defined in ORS 540.505.

[(x)] (u) Utility facility service lines. Utility facility service lines are utility lines and accessory facilities or structures that end at the point where the utility service is received by the customer and that are located on one or more of the following:

(A) A public right of way;

(B) Land immediately adjacent to a public right of way, provided the written consent of all adjacent property owners has been obtained; or

(C) The property to be served by the utility.

[(y)] (v) Subject to the issuance of a license, permit or other approval by the Department of Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with rules adopted under ORS 468B.095, and as provided in ORS 215.246 to 215.251, the land application of reclaimed water, agricultural or industrial process water or biosolids for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in an exclusive farm use zone under this chapter.

[(z)] (w) A county law enforcement facility that lawfully existed on August 20, 2002, and is used to provide rural law enforcement services primarily in rural areas, including parole and post-prison supervision, but not including a correctional facility as defined under ORS 162.135.

(2) The following nonfarm uses may be established, subject to the approval of the governing body or its designee in any area zoned for exclusive farm use subject to ORS 215.296:

(a) Commercial activities that are in conjunction with farm use, including the processing of farm crops into biofuel not permitted under ORS 215.203 (2)(b)(L) or subsection [(1)(u)] (1)(r) of this section.

(b) Operations conducted for:

(A) Mining and processing of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005 not otherwise permitted under subsection [(1)(g)] (1)(f) of this section;

(B) Mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298;

(C) Processing, as defined by ORS 517.750, of aggregate into asphalt or portland cement; and

(D) Processing of other mineral resources and other subsurface resources.

(c) Private parks, playgrounds, hunting and fishing preserves and campgrounds. Subject to the approval of the county governing body or its designee, a private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. Upon request of a county governing body, the Land Conservation and Development Commission may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if the commission determines that the increase will comply with the standards described in ORS 215.296 (1). As used in this paragraph, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hookup or internal cooking appliance.

(d) Parks and playgrounds. A public park may be established consistent with the provisions of ORS 195.120.

(e) Community centers owned by a governmental agency or a nonprofit community organization and operated primarily by and for residents of the local rural community. A community center authorized under this paragraph may provide services to veterans, including but not limited to emergency and transitional shelter, preparation and service of meals, vocational and educational counseling and referral to local, state or federal agencies providing medical, mental health, disability income replacement and substance abuse services, only in a facility that is in existence on January 1, 2006. The services may not include direct delivery of medical, mental health, disability income replacement or substance abuse services.

(f) Golf courses **on land determined not to be high-value farmland, as defined in ORS 195.300.**

(g) Commercial utility facilities for the purpose of generating power for public use by sale.

(h) Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities. A personal-use airport, as used in this section, means an airstrip restricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal-use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Oregon Department of Aviation in specific instances. A personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable rules of the Oregon Department of Aviation.

(i) Home occupations as provided in ORS 215.448.

(j) A facility for the primary processing of forest products, provided that such facility is found to not seriously interfere with accepted farming practices and is compatible with farm uses described in ORS 215.203 (2). Such a facility may be approved for a one-year period which is renewable. These facilities are intended to be only portable or temporary in nature. The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market. Forest products, as used in this section, means timber grown upon a parcel of land or contiguous land where the primary processing facility is located.

(k) A site for the disposal of solid waste approved by the governing body of a city or county or both and for which a permit has been granted under ORS 459.245 by the Department of Environmental Quality together with equipment, facilities or buildings necessary for its operation.

(L) One manufactured dwelling or recreational vehicle, or the temporary residential use of an existing building, in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative of the resident. Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished or returned to an allowed nonresidential use. The governing body or its designee shall provide for periodic review of the hardship claimed under this paragraph. A temporary residence approved under this paragraph is not eligible for replacement under subsection [(1)(s)] **(1)(p)** of this section.

(m) Transmission towers over 200 feet in height.

(n) Dog kennels [*not described in subsection (1)(j) of this section*].

(o) Residential homes as defined in ORS 197.660, in existing dwellings.

(p) The propagation, cultivation, maintenance and harvesting of aquatic species that are not under the jurisdiction of the State Fish and Wildlife Commission or insect species. Insect species shall not include any species under quarantine by the State Department of Agriculture or the United States Department of Agriculture. The county shall provide notice of all applications under this paragraph to the State Department of Agriculture. Notice shall be provided in accordance with the county's land use regulations but shall be mailed at least 20 calendar days prior to any administrative decision or initial public hearing on the application.

(q) Construction of additional passing and travel lanes requiring the acquisition of right of way but not resulting in the creation of new land parcels.

(r) Reconstruction or modification of public roads and highways involving the removal or displacement of buildings but not resulting in the creation of new land parcels.

(s) Improvement of public road and highway related facilities, such as maintenance yards, weigh stations and rest areas, where additional property or right of way is required but not resulting in the creation of new land parcels.

(t) A destination resort that is approved consistent with the requirements of any statewide planning goal relating to the siting of a destination resort.

(u) Room and board arrangements for a maximum of five unrelated persons in existing residences.

(v) Operations for the extraction and bottling of water.

(w) Expansion of existing county fairgrounds and activities directly relating to county fairgrounds governed by county fair boards established pursuant to ORS 565.210.

(x) A living history museum related to resource based activities owned and operated by a governmental agency or a local historical society, together with limited commercial activities and facilities that are directly related to the use and enjoyment of the museum and located within authentic buildings of the depicted historic period or the museum administration building, if areas other than an exclusive farm use zone cannot accommodate the museum and related activities or if the museum administration buildings and parking lot are located within one quarter mile of an urban growth boundary. As used in this paragraph:

(A) "Living history museum" means a facility designed to depict and interpret everyday life and culture of some specific historic period using authentic buildings, tools, equipment and people to simulate past activities and events; and

(B) "Local historical society" means the local historical society recognized by the county governing body and organized under ORS chapter 65.

(y) An aerial fireworks display business that has been in continuous operation at its current location within an exclusive farm use zone since December 31, 1986, and possesses a wholesaler's permit to sell or provide fireworks.

(z) A landscape contracting business, as defined in ORS 671.520, or a business providing landscape architecture services, as described in ORS 671.318, if the business is pursued in conjunction with the growing and marketing of nursery stock on the land that constitutes farm use.

**(aa) Public or private schools for kindergarten through grade 12, including all buildings essential to the operation of a school, primarily for residents of the rural area in which the school is located.**

(3) Roads, highways and other transportation facilities and improvements not allowed under subsections (1) and (2) of this section may be established, subject to the approval of the governing body or its designee, in areas zoned for exclusive farm use subject to:

(a) Adoption of an exception to the goal related to agricultural lands and to any other applicable goal with which the facility or improvement does not comply; or

(b) ORS 215.296 for those uses identified by rule of the Land Conservation and Development Commission as provided in section 3, chapter 529, Oregon Laws 1993.

**SECTION 2a. The provisions of ORS 197.047, 215.503 and 215.513 concerning notice of a new or amended statute, ordinance or administrative rule do not apply to section 16 of this 2009 Act, to the amendments to ORS 215.213 and 215.283 by sections 1 and 2 of this 2009 Act or to any other amendments to or repeal of statutes by sections 3 to 13 and 17 of this 2009 Act.**

**SECTION 3.** ORS 197.065 is amended to read:

197.065. (1) Prior to each legislative session, the Land Conservation and Development Commission shall submit to the appropriate legislative committee a written report analyzing applications approved and denied for:

(a) New and replacement dwellings under:

(A) ORS 215.213 [(1)(e) and (g)] **(1)(d) and (f)**, (2)(a) and (b), (3) and (4), 215.283 [(1)(e) and (f)] **(1)(d) and (e)**, 215.284 and 215.705; and

(B) Any land zoned for forest use under any statewide planning goal that relates to forestland;

(b) Divisions of land under:

(A) ORS 215.263 (2), (4) and (5); and

(B) Any land zoned for forest use under any statewide planning goal that relates to forestland;

(c) Dwellings and land divisions approved for marginal lands under:

(A) ORS 215.317 or 215.327; and

(B) Any land zoned for forest use under any statewide planning goal that relates to forestland; and

(d) Such other matters pertaining to protection of agricultural or forest land as the commission deems appropriate.

(2) The governing body of each county shall provide the Department of Land Conservation and Development with a report of its actions involving those dwellings, land divisions and land designations upon which the commission must report to the appropriate legislative committee under subsection (1) of this section. The department shall establish, after consultation with county governing bodies, an annual reporting period and may establish a schedule for receiving county reports at intervals within the reporting period. The report shall be on a standard form with a standardized explanation adopted by the commission and shall be eligible for grants by the commission. The report shall include the findings for each action except actions involving:

(a) Dwellings authorized by ORS 215.213 [(1)(e)] **(1)(d)** or 215.283 [(1)(e)] **(1)(d)**; or

(b) Land divisions authorized by ORS 215.263 (2) creating parcels as large as or larger than a minimum size established by the commission under ORS 215.780.

(3) The governing body of each county shall, upon request by the department, provide the department with other information necessary to carry out subsection (1) of this section.

**SECTION 4.** ORS 215.203 is amended to read:

215.203. (1) Zoning ordinances may be adopted to zone designated areas of land within the county as exclusive farm use zones. Land within such zones shall be used exclusively for farm use except as otherwise provided in ORS 215.213, 215.283 or 215.284. Farm use zones shall be established only when such zoning is consistent with the comprehensive plan.

(2)(a) As used in this section, "farm use" means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding,

breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. "Farm use" includes the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use. "Farm use" also includes the current employment of land for the primary purpose of obtaining a profit in money by stabling or training equines including but not limited to providing riding lessons, training clinics and schooling shows. "Farm use" also includes the propagation, cultivation, maintenance and harvesting of aquatic, bird and animal species that are under the jurisdiction of the State Fish and Wildlife Commission, to the extent allowed by the rules adopted by the commission. "Farm use" includes the on-site construction and maintenance of equipment and facilities used for the activities described in this subsection. "Farm use" does not include the use of land subject to the provisions of ORS chapter 321, except land used exclusively for growing cultured Christmas trees as defined in subsection (3) of this section or land described in ORS 321.267 (3) or 321.824 (3).

(b) "Current employment" of land for farm use includes:

(A) Farmland, the operation or use of which is subject to any farm-related government program;

(B) Land lying fallow for one year as a normal and regular requirement of good agricultural husbandry;

(C) Land planted in orchards or other perennials, other than land specified in subparagraph (D) of this paragraph, prior to maturity;

(D) Land not in an exclusive farm use zone which has not been eligible for assessment at special farm use value in the year prior to planting the current crop and has been planted in orchards, cultured Christmas trees or vineyards for at least three years;

(E) Wasteland, in an exclusive farm use zone, dry or covered with water, neither economically tillable nor grazeable, lying in or adjacent to and in common ownership with a farm use land and which is not currently being used for any economic farm use;

(F) Except for land under a single family dwelling, land under buildings supporting accepted farm practices, including the processing facilities allowed by ORS 215.213 [(1)(x)] (1)(u) and 215.283 [(1)(u)] (1)(r) and the processing of farm crops into biofuel as commercial activities in conjunction with farm use under ORS 215.213 (2)(c) and 215.283 (2)(a);

(G) Water impoundments lying in or adjacent to and in common ownership with farm use land;

(H) Any land constituting a woodlot, not to exceed 20 acres, contiguous to and owned by the owner of land specially valued for farm use even if the land constituting the woodlot is not utilized in conjunction with farm use;

(I) Land lying idle for no more than one year where the absence of farming activity is due to the illness of the farmer or member of the farmer's immediate family. For purposes of this paragraph, illness includes injury or infirmity whether or not such illness results in death;

(J) Any land described under ORS 321.267 (3) or 321.824 (3);

(K) Land used for the primary purpose of obtaining a profit in money by breeding, raising, kenneling or training of greyhounds for racing; and

(L) Land used for the processing of farm crops into biofuel, as defined in ORS 315.141, if:

(i) Only the crops of the landowner are being processed;

(ii) The biofuel from all of the crops purchased for processing into biofuel is used on the farm of the landowner; or

(iii) The landowner is custom processing crops into biofuel from other landowners in the area for their use or sale.

(c) As used in this subsection, "accepted farming practice" means a mode of operation that is common to farms of a similar nature, necessary for the operation of such farms to obtain a profit in money, and customarily utilized in conjunction with farm use.

(3) "Cultured Christmas trees" means trees:

(a) Grown on lands used exclusively for that purpose, capable of preparation by intensive cultivation methods such as plowing or turning over the soil;

- (b) Of a marketable species;
- (c) Managed to produce trees meeting U.S. No. 2 or better standards for Christmas trees as specified by the Agriculture Marketing Services of the United States Department of Agriculture; and
- (d) Evidencing periodic maintenance practices of shearing for Douglas fir and pine species, weed and brush control and one or more of the following practices: Basal pruning, fertilizing, insect and disease control, stump culture, soil cultivation, irrigation.

**SECTION 5.** ORS 215.246 is amended to read:

215.246. (1) The uses allowed under ORS 215.213 [(1)(bb)] **(1)(y)** and 215.283 [(1)(y)] **(1)(v)**:

(a) Require a determination by the Department of Environmental Quality, in conjunction with the department's review of a license, permit or approval, that the application rates and site management practices for the land application of reclaimed water, agricultural or industrial process water or biosolids ensure continued agricultural, horticultural or silvicultural production and do not reduce the productivity of the tract.

(b) Are not subject to other provisions of ORS 215.213 or 215.283 or to the provisions of ORS 215.275 or 215.296.

(2) The use of a tract of land on which the land application of reclaimed water, agricultural or industrial process water or biosolids has occurred under this section may not be changed to allow a different use unless:

- (a) The tract is included within an acknowledged urban growth boundary;
- (b) The tract is rezoned to a zone other than an exclusive farm use zone;
- (c) The different use of the tract is a farm use as defined in ORS 215.203; or
- (d) The different use of the tract is a use allowed under:
  - (A) ORS 215.213 [(1)(c), (e) to (g), (k), (m) to (q), (s) to (u), (x), (z) or (aa)] **(1)(b), (d) to (f), (i) to (n), (p) to (r), (u), (w) or (x)**;
  - (B) ORS 215.213 (2)(a) to (c), (i), (m) or (p) to (r);
  - (C) ORS 215.283 [(1)(c), (e), (f), (k) to (o), (q) to (s), (u), (w) or (x)] **(1)(b), (d), (e), (h) to (L), (n) to (p), (r), (t) or (u)**; or
  - (D) ORS 215.283 (2)(a), (j), (L) or (p) to (s).

(3) When a state agency or a local government makes a land use decision relating to the land application of reclaimed water, agricultural or industrial process water or biosolids under a license, permit or approval by the Department of Environmental Quality, the applicant shall explain in writing how alternatives identified in public comments on the land use decision were considered and, if the alternatives are not used, explain in writing the reasons for not using the alternatives. The applicant must consider only those alternatives that are identified with sufficient specificity to afford the applicant an adequate opportunity to consider the alternatives. A land use decision relating to the land application of reclaimed water, agricultural or industrial process water or biosolids may not be reversed or remanded under this subsection unless the applicant failed to consider identified alternatives or to explain in writing the reasons for not using the alternatives.

(4) The uses allowed under this section include:

- (a) The treatment of reclaimed water, agricultural or industrial process water or biosolids that occurs as a result of the land application;
- (b) The establishment and use of facilities, including buildings, equipment, aerated and nonaerated water impoundments, pumps and other irrigation equipment, that are accessory to and reasonably necessary for the land application to occur on the subject tract;
- (c) The establishment and use of facilities, including buildings and equipment, that are not on the tract on which the land application occurs for the transport of reclaimed water, agricultural or industrial process water or biosolids to the tract on which the land application occurs if the facilities are located within:
  - (A) A public right of way; or
  - (B) Other land if the landowner provides written consent and the owner of the facility complies with ORS 215.275 (4); and

(d) The transport by vehicle of reclaimed water or agricultural or industrial process water to a tract on which the water will be applied to land.

(5) Uses not allowed under this section include:

(a) The establishment and use of facilities, including buildings or equipment, for the treatment of reclaimed water, agricultural or industrial process water or biosolids other than those treatment facilities related to the treatment that occurs as a result of the land application; or

(b) The establishment and use of utility facility service lines allowed under ORS 215.213 [(1)(aa)] (1)(x) or 215.283 [(1)(x)] (1)(u).

**SECTION 6.** ORS 215.249 is amended to read:

215.249. Notwithstanding ORS 215.263, the governing body of a county or its designee may not approve a proposed division of land in an exclusive farm use zone for the land application of reclaimed water, agricultural or industrial process water or biosolids described in ORS 215.213 [(1)(bb)] (1)(y) or 215.283 [(1)(y)] (1)(v).

**SECTION 7.** ORS 215.251 is amended to read:

215.251. Nothing in ORS 215.213 [(1)(bb)] (1)(y), 215.246 to 215.249 or 215.283 [(1)(y)] (1)(v) affects whether the land application of a substance not described in ORS 215.213 [(1)(bb)] (1)(y), 215.246 to 215.249 or 215.283 [(1)(y)] (1)(v) is a farm use as defined in ORS 215.203.

**SECTION 8.** ORS 215.263 is amended to read:

215.263. (1) Any proposed division of land included within an exclusive farm use zone resulting in the creation of one or more parcels of land shall be reviewed and approved or disapproved by the governing body or its designee of the county in which the land is situated. The governing body of a county by ordinance shall require such prior review and approval for such divisions of land within exclusive farm use zones established within the county.

(2) The governing body of a county or its designee may approve a proposed division of land to create parcels for farm use as defined in ORS 215.203 if it finds:

(a) That the proposed division of land is appropriate for the continuation of the existing commercial agricultural enterprise within the area; or

(b) The parcels created by the proposed division are not smaller than the minimum size established under ORS 215.780.

(3) The governing body of a county or its designee may approve a proposed division of land in an exclusive farm use zone for nonfarm uses, except dwellings, set out in ORS 215.213 (2) or 215.283 (2) if it finds that the parcel for the nonfarm use is not larger than the minimum size necessary for the use. The governing body may establish other criteria as it considers necessary.

(4) In western Oregon, as defined in ORS 321.257, but not in the Willamette Valley, as defined in ORS 215.010, the governing body of a county or its designee:

(a) May approve a division of land in an exclusive farm use zone to create up to two new parcels smaller than the minimum size established under ORS 215.780, each to contain a dwelling not provided in conjunction with farm use if:

(A) The nonfarm dwellings have been approved under ORS 215.213 (3) or 215.284 (2) or (3);

(B) The parcels for the nonfarm dwellings are divided from a lot or parcel that was lawfully created prior to July 1, 2001;

(C) The parcels for the nonfarm dwellings are divided from a lot or parcel that complies with the minimum size established under ORS 215.780;

(D) The remainder of the original lot or parcel that does not contain the nonfarm dwellings complies with the minimum size established under ORS 215.780; and

(E) The parcels for the nonfarm dwellings are generally unsuitable for the production of farm crops and livestock or merchantable tree species considering the terrain, adverse soil or land conditions, drainage or flooding, vegetation, location and size of the tract. A parcel may not be considered unsuitable based solely on size or location if the parcel can reasonably be put to farm or forest use in conjunction with other land.

(b) May approve a division of land in an exclusive farm use zone to divide a lot or parcel into two parcels, each to contain one dwelling not provided in conjunction with farm use if:

- (A) The nonfarm dwellings have been approved under ORS 215.284 (2) or (3);
  - (B) The parcels for the nonfarm dwellings are divided from a lot or parcel that was lawfully created prior to July 1, 2001;
  - (C) The parcels for the nonfarm dwellings are divided from a lot or parcel that is equal to or smaller than the minimum size established under ORS 215.780 but equal to or larger than 40 acres;
  - (D) The parcels for the nonfarm dwellings are:
    - (i) Not capable of producing more than at least 50 cubic feet per acre per year of wood fiber; and
    - (ii) Composed of at least 90 percent Class VI through VIII soils;
  - (E) The parcels for the nonfarm dwellings do not have established water rights for irrigation; and
  - (F) The parcels for the nonfarm dwellings are generally unsuitable for the production of farm crops and livestock or merchantable tree species considering the terrain, adverse soil or land conditions, drainage or flooding, vegetation, location and size of the tract. A parcel may not be considered unsuitable based solely on size or location if the parcel can reasonably be put to farm or forest use in conjunction with other land.
- (5) In eastern Oregon, as defined in ORS 321.805, the governing body of a county or its designee:
- (a) May approve a division of land in an exclusive farm use zone to create up to two new parcels smaller than the minimum size established under ORS 215.780, each to contain a dwelling not provided in conjunction with farm use if:
    - (A) The nonfarm dwellings have been approved under ORS 215.284 (7);
    - (B) The parcels for the nonfarm dwellings are divided from a lot or parcel that was lawfully created prior to July 1, 2001;
    - (C) The parcels for the nonfarm dwellings are divided from a lot or parcel that complies with the minimum size established under ORS 215.780;
    - (D) The remainder of the original lot or parcel that does not contain the nonfarm dwellings complies with the minimum size established under ORS 215.780; and
    - (E) The parcels for the nonfarm dwellings are generally unsuitable for the production of farm crops and livestock or merchantable tree species considering the terrain, adverse soil or land conditions, drainage or flooding, vegetation, location and size of the tract. A parcel may not be considered unsuitable based solely on size or location if the parcel can reasonably be put to farm or forest use in conjunction with other land.
  - (b) May approve a division of land in an exclusive farm use zone to divide a lot or parcel into two parcels, each to contain one dwelling not provided in conjunction with farm use if:
    - (A) The nonfarm dwellings have been approved under ORS 215.284 (7);
    - (B) The parcels for the nonfarm dwellings are divided from a lot or parcel that was lawfully created prior to July 1, 2001;
    - (C) The parcels for the nonfarm dwellings are divided from a lot or parcel that is equal to or smaller than the minimum size established under ORS 215.780 but equal to or larger than 40 acres;
    - (D) The parcels for the nonfarm dwellings are:
      - (i) Not capable of producing more than at least 20 cubic feet per acre per year of wood fiber; and
      - (ii) Either composed of at least 90 percent Class VII and VIII soils, or composed of at least 90 percent Class VI through VIII soils and are not capable of producing adequate herbaceous forage for grazing livestock. The Land Conservation and Development Commission, in cooperation with the State Department of Agriculture and other interested persons, may establish by rule objective criteria for identifying units of land that are not capable of producing adequate herbaceous forage for grazing livestock. In developing the criteria, the commission shall use the latest information from the United States Natural Resources Conservation Service and consider costs required to utilize grazing lands that differ in acreage and productivity level;
    - (E) The parcels for the nonfarm dwellings do not have established water rights for irrigation; and



(F) The parcels for the nonfarm dwellings are generally unsuitable for the production of farm crops and livestock or merchantable tree species considering the terrain, adverse soil or land conditions, drainage or flooding, vegetation, location and size of the tract. A parcel may not be considered unsuitable based solely on size or location if the parcel can reasonably be put to farm or forest use in conjunction with other land.

(6) This section does not apply to the creation or sale of cemetery lots, if a cemetery is within the boundaries designated for a farm use zone at the time the zone is established.

(7) This section does not apply to divisions of land resulting from lien foreclosures or divisions of land resulting from foreclosure of recorded contracts for the sale of real property.

(8) The governing body of a county may not approve any proposed division of a lot or parcel described in ORS 215.213 [(1)(e) or (k)] **(1)(d) or (i)**, 215.283 [(1)(e)] **(1)(d) or (2)(L)** or 215.284 (1), or a proposed division that separates a processing facility from the farm operation specified in ORS 215.213 [(1)(x)] **(1)(u)** or 215.283 [(1)(u)] **(1)(r)**.

(9) The governing body of a county may approve a proposed division of land in an exclusive farm use zone to create a parcel with an existing dwelling to be used:

(a) As a residential home as described in ORS 197.660 (2) only if the dwelling has been approved under ORS 215.213 (3) or 215.284 (1), (2), (3), (4) or (7); and

(b) For historic property that meets the requirements of ORS 215.213 [(1)(q)] **(1)(n)** and 215.283 [(1)(o)] **(1)(L)**.

(10)(a) Notwithstanding ORS 215.780, the governing body of a county or its designee may approve a proposed division of land provided:

(A) The land division is for the purpose of allowing a provider of public parks or open space, or a not-for-profit land conservation organization, to purchase at least one of the resulting parcels; and

(B) A parcel created by the land division that contains a dwelling is large enough to support continued residential use of the parcel.

(b) A parcel created pursuant to this subsection that does not contain a dwelling:

(A) Is not eligible for siting a dwelling, except as may be authorized under ORS 195.120;

(B) May not be considered in approving or denying an application for siting any other dwelling;

(C) May not be considered in approving a redesignation or rezoning of forestlands except for a redesignation or rezoning to allow a public park, open space or other natural resource use; and

(D) May not be smaller than 25 acres unless the purpose of the land division is:

(i) To facilitate the creation of a wildlife or pedestrian corridor or the implementation of a wildlife habitat protection plan; or

(ii) To allow a transaction in which at least one party is a public park or open space provider, or a not-for-profit land conservation organization, that has cumulative ownership of at least 2,000 acres of open space or park property.

(11) The governing body of a county or its designee may approve a division of land smaller than the minimum lot or parcel size described in ORS 215.780 (1) and (2) in an exclusive farm use zone provided:

(a) The division is for the purpose of establishing a church, including cemeteries in conjunction with the church;

(b) The church has been approved under ORS 215.213 (1) or 215.283 (1);

(c) The newly created lot or parcel is not larger than five acres; and

(d) The remaining lot or parcel, not including the church, meets the minimum lot or parcel size described in ORS 215.780 (1) and (2) either by itself or after it is consolidated with another lot or parcel.

(12) The governing body of a county may not approve a division of land for nonfarm use under subsection (3), (4), (5), (9), (10) or (11) of this section unless any additional tax imposed for the change in use has been paid.

(13) Parcels used or to be used for training or stabling facilities may not be considered appropriate to maintain the existing commercial agricultural enterprise in an area where other types of agriculture occur.

**SECTION 9.** ORS 215.275 is amended to read:

215.275. (1) A utility facility established under ORS 215.213 [(1)(d)] (1)(c) or 215.283 [(1)(d)] (1)(c) is necessary for public service if the facility must be sited in an exclusive farm use zone in order to provide the service.

(2) To demonstrate that a utility facility is necessary, an applicant for approval under ORS 215.213 [(1)(d)] (1)(c) or 215.283 [(1)(d)] (1)(c) must show that reasonable alternatives have been considered and that the facility must be sited in an exclusive farm use zone due to one or more of the following factors:

(a) Technical and engineering feasibility;

(b) The proposed facility is locationally dependent. A utility facility is locationally dependent if it must cross land in one or more areas zoned for exclusive farm use in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;

(c) Lack of available urban and nonresource lands;

(d) Availability of existing rights of way;

(e) Public health and safety; and

(f) Other requirements of state or federal agencies.

(3) Costs associated with any of the factors listed in subsection (2) of this section may be considered, but cost alone may not be the only consideration in determining that a utility facility is necessary for public service. Land costs shall not be included when considering alternative locations for substantially similar utility facilities. The Land Conservation and Development Commission shall determine by rule how land costs may be considered when evaluating the siting of utility facilities that are not substantially similar.

(4) The owner of a utility facility approved under ORS 215.213 [(1)(d)] (1)(c) or 215.283 [(1)(d)] (1)(c) shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this section shall prevent the owner of the utility facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.

(5) The governing body of the county or its designee shall impose clear and objective conditions on an application for utility facility siting under ORS 215.213 [(1)(d)] (1)(c) or 215.283 [(1)(d)] (1)(c) to mitigate and minimize the impacts of the proposed facility, if any, on surrounding lands devoted to farm use in order to prevent a significant change in accepted farm practices or a significant increase in the cost of farm practices on the surrounding farmlands.

(6) The provisions of subsections (2) to (5) of this section do not apply to interstate natural gas pipelines and associated facilities authorized by and subject to regulation by the Federal Energy Regulatory Commission.

**SECTION 10.** ORS 215.417 is amended to read:

215.417. (1) If a permit is approved under ORS 215.416 for a proposed residential development on agricultural or forest land outside of an urban growth boundary under ORS 215.010 to 215.293 or 215.317 to 215.438 or under county legislation or regulation, the permit shall be valid for four years.

(2) An extension of a permit described in subsection (1) of this section shall be valid for two years.

(3) For the purposes of this section, “residential development” only includes the dwellings provided for under ORS 215.213 [(1)(t)] (1)(q), (3) and (4), 215.283 [(1)(s)] (1)(p), 215.284, 215.317, 215.705 (1) to (3), 215.720, 215.740, 215.750 and 215.755 (1) and (3).

**SECTION 11.** ORS 215.452 is amended to read:

215.452. (1) A winery, authorized under ORS 215.213 [(1)(s)] (1)(p) and 215.283 [(1)(q)] (1)(n), is a facility that produces wine with a maximum annual production of:

- (a) Less than 50,000 gallons and that:
  - (A) Owns an on-site vineyard of at least 15 acres;
  - (B) Owns a contiguous vineyard of at least 15 acres;
  - (C) Has a long-term contract for the purchase of all of the grapes from at least 15 acres of a vineyard contiguous to the winery; or
  - (D) Obtains grapes from any combination of subparagraph (A), (B) or (C) of this paragraph; or
- (b) At least 50,000 gallons and no more than 100,000 gallons and that:
  - (A) Owns an on-site vineyard of at least 40 acres;
  - (B) Owns a contiguous vineyard of at least 40 acres;
  - (C) Has a long-term contract for the purchase of all of the grapes from at least 40 acres of a vineyard contiguous to the winery; or
  - (D) Obtains grapes from any combination of subparagraph (A), (B) or (C) of this paragraph.
- (2) The winery described in subsection (1)(a) or (b) of this section shall allow only the sale of:
  - (a) Wines produced in conjunction with the winery; and
  - (b) Items directly related to wine, the sales of which are incidental to retail sale of wine on-site. Such items include those served by a limited service restaurant, as defined in ORS 624.010.
- (3) Prior to the issuance of a permit to establish a winery under this section, the applicant shall show that vineyards, described in subsection (1)(a) and (b) of this section, have been planted or that the contract has been executed, as applicable.
- (4) A local government shall adopt findings for each of the standards described in paragraphs (a) and (b) of this subsection. Standards imposed on the siting of a winery shall be limited solely to each of the following for the sole purpose of limiting demonstrated conflicts with accepted farming or forest practices on adjacent lands:
  - (a) Establishment of a setback, not to exceed 100 feet, from all property lines for the winery and all public gathering places; and
  - (b) Provision of direct road access, internal circulation and parking.
- (5) A local government shall also apply local criteria regarding floodplains, geologic hazards, the Willamette River Greenway, solar access, airport safety or other regulations for resource protection acknowledged to comply with any statewide goal respecting open spaces, scenic and historic areas and natural resources.

**SECTION 12.** ORS 215.780 is amended to read:

- 215.780. (1) Except as provided in subsection (2) of this section, the following minimum lot or parcel sizes apply to all counties:
- (a) For land zoned for exclusive farm use and not designated rangeland, at least 80 acres;
  - (b) For land zoned for exclusive farm use and designated rangeland, at least 160 acres; and
  - (c) For land designated forestland, at least 80 acres.
- (2) A county may adopt a lower minimum lot or parcel size than that described in subsection (1) of this section in any of the following circumstances:
- (a) By demonstrating to the Land Conservation and Development Commission that it can do so while continuing to meet the requirements of ORS 215.243 and 527.630 and the land use planning goals adopted under ORS 197.230.
  - (b) To allow the establishment of a parcel for a dwelling on land zoned for forest use or mixed farm and forest use, subject to the following requirements:
    - (A) The parcel established shall not be larger than five acres, except as necessary to recognize physical factors such as roads or streams, in which case the parcel shall be no larger than 10 acres;
    - (B) The dwelling existed prior to June 1, 1995;
    - (C)(i) The remaining parcel, not containing the dwelling, meets the minimum land division standards of the zone; or
    - (ii) The remaining parcel, not containing the dwelling, is consolidated with another parcel, and together the parcels meet the minimum land division standards of the zone; and
    - (D) The remaining parcel, not containing the dwelling, is not entitled to a dwelling unless subsequently authorized by law or goal.

(c) In addition to the requirements of paragraph (b) of this subsection, if the land is zoned for mixed farm and forest use the following requirements apply:

(A) The minimum tract eligible under paragraph (b) of this subsection is 40 acres.

(B) The tract shall be predominantly in forest use and that portion in forest use qualified for special assessment under a program under ORS chapter 321.

(C) The remainder of the tract shall not qualify for any uses allowed under ORS 215.213 and 215.283 that are not allowed on forestland.

(d) To allow a division of forestland to facilitate a forest practice as defined in ORS 527.620 that results in a parcel that does not meet the minimum area requirements of subsection (1)(c) of this section or paragraph (a) of this subsection. Parcels created pursuant to this subsection:

(A) Shall not be eligible for siting of a new dwelling;

(B) Shall not serve as the justification for the siting of a future dwelling on other lots or parcels;

(C) Shall not, as a result of the land division, be used to justify redesignation or rezoning of resource lands;

(D) Shall not result in a parcel of less than 35 acres, except:

(i) Where the purpose of the land division is to facilitate an exchange of lands involving a governmental agency; or

(ii) Where the purpose of the land division is to allow transactions in which at least one participant is a person with a cumulative ownership of at least 2,000 acres of forestland; and

(E) If associated with the creation of a parcel where a dwelling is involved, shall not result in a parcel less than the minimum lot or parcel size of the zone.

(e) To allow a division of a lot or parcel zoned for forest use or mixed farm and forest use under a statewide planning goal protecting forestland if:

(A) At least two dwellings lawfully existed on the lot or parcel prior to November 4, 1993;

(B) Each dwelling complies with the criteria for a replacement dwelling under ORS 215.213 [(1)(t)] **(1)(q)** or 215.283 [(1)(s)] **(1)(p)**;

(C) Except for one lot or parcel, each lot or parcel created under this paragraph is between two and five acres in size;

(D) At least one dwelling is located on each lot or parcel created under this paragraph; and

(E) The landowner of a lot or parcel created under this paragraph provides evidence that a restriction prohibiting the landowner and the landowner's successors in interest from further dividing the lot or parcel has been recorded with the county clerk of the county in which the lot or parcel is located. A restriction imposed under this paragraph shall be irrevocable unless a statement of release is signed by the county planning director of the county in which the lot or parcel is located indicating that the comprehensive plan or land use regulations applicable to the lot or parcel have been changed so that the lot or parcel is no longer subject to statewide planning goals protecting forestland or unless the land division is subsequently authorized by law or by a change in a statewide planning goal for land zoned for forest use or mixed farm and forest use.

(f) To allow a proposed division of land in a forest zone or a mixed farm and forest zone as provided in ORS 215.783.

(3) A county planning director shall maintain a record of lots and parcels that do not qualify for division under the restrictions imposed under subsections (2)(e) and (4) of this section. The record shall be readily available to the public.

(4) A lot or parcel may not be divided under subsection (2)(e) of this section if an existing dwelling on the lot or parcel was approved under:

(a) A statute, an administrative rule or a land use regulation as defined in ORS 197.015 that required removal of the dwelling or that prohibited subsequent division of the lot or parcel; or

(b) A farm use zone provision that allowed both farm and forest uses in a mixed farm and forest use zone under a statewide planning goal protecting forestland.

(5) A county with a minimum lot or parcel size acknowledged by the commission pursuant to ORS 197.251 after January 1, 1987, or acknowledged pursuant to periodic review requirements under

ORS 197.628 to 197.650 that is smaller than those prescribed in subsection (1) of this section need not comply with subsection (2) of this section.

(6)(a) An applicant for the creation of a parcel pursuant to subsection (2)(b) of this section shall provide evidence that a restriction on the remaining parcel, not containing the dwelling, has been recorded with the county clerk of the county where the property is located. An applicant for the creation of a parcel pursuant to subsection (2)(d) of this section shall provide evidence that a restriction on the newly created parcel has been recorded with the county clerk of the county where the property is located. The restriction shall allow no dwellings unless authorized by law or goal on land zoned for forest use except as permitted under subsection (2) of this section.

(b) A restriction imposed under this subsection shall be irrevocable unless a statement of release is signed by the county planning director of the county where the property is located indicating that the comprehensive plan or land use regulations applicable to the property have been changed in such a manner that the parcel is no longer subject to statewide planning goals pertaining to agricultural land or forestland.

(c) The county planning director shall maintain a record of parcels that do not qualify for the siting of a new dwelling under restrictions imposed by this subsection. The record shall be readily available to the public.

(7) A landowner allowed a land division under subsection (2) of this section shall sign a statement that shall be recorded with the county clerk of the county in which the property is located, declaring that the landowner and the landowner's successors in interest will not in the future complain about accepted farming or forest practices on nearby lands devoted to farm or forest use.

**SECTION 13.** ORS 308A.056 is amended to read:

308A.056. (1) As used in ORS 308A.050 to 308A.128, "farm use" means the current employment of land for the primary purpose of obtaining a profit in money by:

- (a) Raising, harvesting and selling crops;
- (b) Feeding, breeding, managing or selling livestock, poultry, fur-bearing animals or honeybees or the produce thereof;
- (c) Dairying and selling dairy products;
- (d) Stabling or training equines, including but not limited to providing riding lessons, training clinics and schooling shows;
- (e) Propagating, cultivating, maintaining or harvesting aquatic species and bird and animal species to the extent allowed by the rules adopted by the State Fish and Wildlife Commission;
- (f) On-site constructing and maintaining equipment and facilities used for the activities described in this subsection;
- (g) Preparing, storing or disposing of, by marketing or otherwise, the products or by-products raised for human or animal use on land described in this section; or
- (h) Using land described in this section for any other agricultural or horticultural use or animal husbandry or any combination thereof.

(2) "Farm use" does not include the use of land subject to timber and forestland taxation under ORS chapter 321, except land used exclusively for growing cultured Christmas trees or land described in ORS 321.267 (3) or 321.824 (3) (relating to land used to grow certain hardwood timber, including hybrid cottonwood).

(3) For purposes of this section, land is currently employed for farm use if the land is:

- (a) Farmland, the operation or use of which is subject to any farm-related government program;
- (b) Land lying fallow for one year as a normal and regular requirement of good agricultural husbandry;
- (c) Land planted in orchards or other perennials, other than land specified in paragraph (d) of this subsection, prior to maturity;
- (d) Land not in an exclusive farm use zone that has not been eligible for assessment at special farm use value in the year prior to planting the current crop and has been planted in orchards, cultured Christmas trees or vineyards for at least three years;

(e) Wasteland, in an exclusive farm use zone, dry or covered with water, neither economically tillable nor grazeable, lying in or adjacent to and in common ownership with farm use land and that is not currently being used for any economic farm use;

(f) Except for land under a single family dwelling, land under buildings supporting accepted farming practices, including the processing facilities allowed by ORS 215.213 [(1)(x)] (1)(u) and 215.283 [(1)(u)] (1)(r) and the processing of farm crops into biofuel as commercial activities in conjunction with farm use under ORS 215.213 (2)(c) and 215.283 (2)(a);

(g) Water impoundments lying in or adjacent to and in common ownership with farm use land;

(h) Any land constituting a woodlot, not to exceed 20 acres, contiguous to and owned by the owner of land specially valued for farm use even if the land constituting the woodlot is not utilized in conjunction with farm use;

(i) Land lying idle for no more than one year when the absence of farming activity is the result of the illness of the farmer or a member of the farmer's immediate family, including injury or infirmity, regardless of whether the illness results in death;

(j) Land described under ORS 321.267 (3) or 321.824 (3) (relating to land used to grow certain hardwood timber, including hybrid cottonwood);

(k) Land used for the primary purpose of obtaining a profit in money by breeding, raising, kenneling or training greyhounds for racing; or

(L) Land used for the processing of farm crops into biofuel, as defined in ORS 315.141, if:

(i) Only the crops of the landowner are being processed;

(ii) The biofuel from all of the crops purchased for processing into biofuel is used on the farm of the landowner; or

(iii) The landowner is custom processing crops into biofuel from other landowners in the area for their use or sale.

(4) As used in this section:

(a) "Accepted farming practice" means a mode of operation that is common to farms of a similar nature, necessary for the operation of these similar farms to obtain a profit in money and customarily utilized in conjunction with farm use.

(b) "Cultured Christmas trees" means trees:

(A) Grown on lands used exclusively for that purpose, capable of preparation by intensive cultivation methods such as plowing or turning over the soil;

(B) Of a marketable species;

(C) Managed to produce trees meeting U.S. No. 2 or better standards for Christmas trees as specified by the Agricultural Marketing Service of the United States Department of Agriculture; and

(D) Evidencing periodic maintenance practices of shearing for Douglas fir and pine species, weed and brush control and one or more of the following practices:

(i) Basal pruning;

(ii) Fertilizing;

(iii) Insect and disease control;

(iv) Stump culture;

(v) Soil cultivation; or

(vi) Irrigation.

**SECTION 14. (1) In addition to and not in lieu of the authority in ORS 215.130 to continue, alter, restore or replace a use that has been disallowed by the enactment or amendment of a zoning ordinance or regulation, a use formerly allowed pursuant to ORS 215.213 (1)(a) or 215.283 (1)(a), as in effect before the effective date of this 2009 Act, may be expanded subject to:**

**(a) The requirements of subsection (2) of this section; and**

**(b) Conditional approval of the county in the manner provided in ORS 215.296.**

**(2) A nonconforming use described in subsection (1) of this section may be expanded under this section if:**

**(a) The use was established on or before January 1, 2009; and**

- (b) The expansion occurs on:
- (A) The tax lot on which the use was established on or before January 1, 2009; or
  - (B) A tax lot that is contiguous to the tax lot described in subparagraph (A) of this paragraph and that was owned by the applicant on January 1, 2009.

**NOTE:** Section 15 was deleted by amendment. Subsequent sections were not renumbered.

**SECTION 16.** On or before December 31, 2010, a county shall amend its land use regulations to conform to the amendments to ORS 215.213 by section 1 of this 2009 Act or ORS 215.283 by section 2 of this 2009 Act, whichever is applicable. Notwithstanding contrary provisions of state law or a county charter relating to public hearings on amendments to an ordinance, a county may adopt amendments to its land use regulations required by this section without holding a public hearing and without adopting findings if:

(1) The county has given notice to the Department of Land Conservation and Development of the proposed amendments in the manner provided by ORS 197.610; and

(2) The department has confirmed in writing that the only effect of the proposed amendments is to conform the county's land use regulations to the amendments to ORS 215.213 by section 1 of this 2009 Act or ORS 215.283 by section 2 of this 2009 Act, whichever is applicable.

**NOTE:** Section 17 was deleted by amendment. Subsequent sections were not renumbered.

**SECTION 18.** The amendments to ORS 215.213 and 215.283 by sections 1 and 2 of this 2009 Act apply to uses established on or after the effective date of this 2009 Act.

Passed by House May 8, 2009

Received by Governor:

Repassed by House June 29, 2009

.....M.,....., 2009

Approved:

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Chief Clerk of House

.....M.,....., 2009

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Speaker of House

.....  
Governor

Passed by Senate June 9, 2009

Filed in Office of Secretary of State:

Repassed by Senate June 29, 2009

.....M.,....., 2009

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President of Senate

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Secretary of State